

Rept # FW 029109
ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FORT WORTH DIVISION

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

2017 AUG -7 PM 12: 02

CLERK OF COURT

JOE ARTHUR HICKS
PLAINTIFF,

VS.

ALBERTSON'S PHARMACY
DEFENDANT.

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4-17 CV 649 EA
CIVIL ACTION NO. _____

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE SAID COURT:

NOW COMES JOE ARTHUR HICKS, HEREINAFTER PLAINTIFF IN THE ABOVE- CAPTIONED CAUSE AND FILES THIS COMPLAINT DUE TO PHARMACEUTICAL MALPRACTICE. PLAINTIFF WOULD SHOW THE COURT THE FOLLOWING:

(1). THE DEFENDANT, ALBERTSON'S PHARMACY, WRONGFULLY DISPENSED A PRESCRIPTION DRUG, LIPITOR, NOT PRESCRIBED TO THE PLAINTIFF. THE TAKING OF SAID DRUG FOR TWO WEEKS CAUSED THE PLAINTIFF TO SUFFER FROM ELEVATED HYPERTENSION AND ELEVATED SUGAR.

PARTIES

(2). JOE ARTHUR HICKS, PLAINTIFF, AND RESIDES IN TARRANT COUNTY, TEXAS, FORT WORTH, TEXAS.

(3). ALBERTSON'S PHARMACY, DEFENDANT, LOCATED AT 3563 ALTON ROAD, FORT WORTH, TEXAS 76109.

JURISDICTION

(4). THE COURT HAS JURSDICTION OVER THIS ACTION BECAUSE THE MATTER IN CONTROVERSY EXCEEDS THE SUM OR VALUE OF \$75,000.00. 28 U.S.C. SEC. 1332.

(1).

VENUE

(5). THE COURT HAS PROPER VENUE IN THIS CIVIL COMPLAINT BECAUSE THE PARTIES IN THIS ACTION RESIDES IN TARRANT COUNTY, TEXAS. 28 U.S.C. SEC. 1391.

STATEMENT OF THE CLAIMS

(6). IN THE MONTH OF MAY 2016, THE PLAINTIFF WENT TO THE DEFENDANT TO HAVE A PRESCRIPTION OF METOPROLOL TARTRATE 100 MG, TO BE FILLED FOR THE PLAINTIFF'S HYPERTENSION. INSTEAD OF THE RIGHT PRESCRIPTION FOR THE PLAINTIFF'S HYPERTENSION, LIPITOR WAS ERRONEOUSLY FILLED BY THE DEFENDANT. THUS, CAUSING THE PLAINTIFF A VISIT TO BAYLOR ALL SAINTS MEDICAL CENTER ON JUNE 12, 2016. THE RESULT OF THE PLAINTIFF TAKING THE WRONG MEDICATION FOR A LEAST TWO (2) WEEKS LEAD TO A HIGHER BLOOD PRESSURE RATE AND THOUSANDS OF DOLLARS IN MEDICAL BILLS.

PHARMACEUTICAL MALPRACTICE

(7). GREGORY B. CARTWRIGHT, M.D., UNDOUBTEDLY PRESCRIBED METOPROLOL FOR THE PLAINTIFF INSTEAD OF LIPITOR. THE DEFENDANT IMPROPERLY FILLED THE PRESCRIPTION DRUG LIPITOR, A PRESCRIPTION MEDICATION NOT PRESCRIBED BY THE PLAINTIFF'S DOCTOR, GREGORY B. CARTWRIGHT, M.D. PHARMACISTS HAVE A LEGAL DUTY TO DISPENSE THE CORRECT MEDICATION TO PATIENTS. IN THE INSTANT CASE, THE DEFENDANT FAILED TO DO SO.

DAMAGES

(8). PLAINTIFF SEEKS THE MAXIMUM DAMAGES FOR PHARMACEUTICAL MALPRACTICE, \$250,000.00.

JURY TRIAL

(9). PURSUANT TO FED. R. CIV. P. 38 (A)-(B), PLAINTIFF DEMANDS A JURY TRIAL IN THIS CAUSE OF ACTION.

DEMAND FOR JUDGEMENT

(10). WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS FOR ALL DAMAGES ALLEGED HEREIN, COURT COST AND FOR SUCH OTHER AND FURTHER RELIEF TO WHICH THE PLAINTIFF MAY BE RIGHTLY ENTITLED TO.

RESPECTFULLY SUBMITTED,


PLAINTIFF, JOE A. HICKS
PRO SE LITIGANT

VERIFICATION

I JOE A. HICKS, PLAINTIFF IN THE ABOVE-ENTITLED ACTION, HAVE READ THE FOREGOING PLEADINGS AND KNOW THE CONTENTS THEREOF. THE SAME IS TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO THOSE MATTERS WHICH ARE THEREIN ALLEGED ON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS, I BELIEVE IT TO BE TRUE.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS DECLARATION WAS EXECUTED IN TARRANT COUNTY, TEXAS.

DATE: AUGUST 17, 2017


PLAINTIFF, JOE A. HICKS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS <u>JOE ARTHUR HICKS</u> (b) County of Residence of First Listed Plaintiff <u>TARRANT</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small> <u>1301 Castle Ridge Rd.</u> <u>FORT WORTH, TEXAS 76140</u> (c) Attorneys (Firm Name, Address, and Telephone Number)	DEFENDANTS <u>ALBERTSON'S PHARMACY</u> County of Residence of First Listed Defendant <u>TARRANT</u> <small>(IN U.S. PLAINTIFF CASES ONLY)</small> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) <div style="text-align: center; font-size: 1.5em; font-weight: bold;">4:17 CV 649-A</div>
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; border-bottom: 1px solid black;">CITIZENSHIP</th> <th style="text-align: center; border-bottom: 1px solid black;">PTF</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF</th> <th style="text-align: left; border-bottom: 1px solid black;">INCORPORATED OR PRINCIPAL PLACE OF BUSINESS</th> <th style="text-align: center; border-bottom: 1px solid black;">PTF</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	CITIZENSHIP	PTF	DEF	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS	PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)				Click here for: Nature of Suit Code Descriptions.	
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FOREIGN/REPEAL/SEIZURE <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: medical malpractice

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: _____ SIGNATURE OF ATTORNEY OF RECORD: Joe A. Hicks

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____